DA 01-1072

IN THE MATTER OF EXTENSION OF THE FIVE-YEAR BUILD-OUT PERIOD FOR BTA AUTHORIZATION HOLDERS IN THE MULTIPOINT DISTRIBUTION SERVICE

Reply Comments from TVCN and MDA, Inc.
May 15, 2001

To the Chief, Mass Media Bureau:

Reply Comments. This letter constitutes our Reply Comments to The Commission's Public Notice DA 01-1072 with regard to extending the build-out period for the BTA's. By way of introduction, we were the first to receive a 4-channel MMDS license in 1984 under MDA, Inc. Now between MDA and TVCN, two affiliated companies, we hold eighteen (18) BTA rights and licenses throughout the USA. First, as a pioneer of this industry, we agree that an extension of time is merited for many reasons. However, being intimately familiar with the industry and on the front lines of the dramatic changes now occurring, we feel that it would be much more equitable to provide a five (5) – eight (8) year extension of time.

Summary of Reasons: First, the auction of unused MDS spectrum was completed in March of 1996. At the time, a five (5) year build-out period seemed reasonable and would have been had it not been for several superceding and intervening factors. Successful bidders/licensees planned to build one-way, analog MDS stations for each respective service area with relatively well-established technology and equipment. Five (5) years was a reasonable time frame in which to do this.

However, in July of 1996 the first significant change took place. It was then that the *Digital Declaratory Ruling* first allowed licensees to digitize their spectrum. This provided for a whole new generation of services and substantially changed the technical requirements for build-out. This change alone would merit a significant extension in time to complete the build-out. However, it was just the first of many.

Then, in 1997 a petition was filed to allow for two-way services. This petition was reviewed and approved in October of 1998. This decision marked the most significant and definitive turning point in the history of our industry. It changed our entire focus, thrust and scope. At that time six (6) additional parameters became part of each licensee's build-out requirements. Again, a significant and substantial change took place. Those licensees who thought they were buying the relatively simple analog, one-way, MDS spectrum were now faced with the following major changes:

1. Digital vs. Analog.
2. Two-way, interactive frequency use instead of one-way.
3. Increased modulation types.
4. Spectrum division and channel swapping.
5. Modified licensing for cellular zed systems.
6. Modified digital ITFS programming requirements.

These changes mandated across-the-board technological changes while, at the

same time, the technology was (and is) still evolving. Dozens of technological changes have taken place in this industry since 1996. The technology that licensees anticipated and planned for in 1996 was outdated *six* times by 1998. Even today, that equipment is still being tested by manufacturers.

The Public Interest. We all concur that the public interest should be served as well as possible by each licensee. This should include full, state-of-the-art capability in each BTA. Consumers who were happy with only analog, wireless cable TV in 1996 now want (even demand) two-way, broadband, multi-spectrum communication, high-speed internet access, mega-channel wireless cable TV, video-on-demand, paging, cellular telephone, video conferencing, wireless-web cell phone and PDA (Palm Pilot) and other applications, to name only a few.

The very recent advent of so called "Piconets" which make use of very low power, broadband applications will further revolutionize almost every aspect of e-commerce, broadcast services, transportation services, electronic credit cards, wireless intra-nets, VPN's, highway department real-time traffic alerts, educational systems, pocket computers and dozens (even hundreds!) of new and evolving applications. One innovation just announced in April of 2001 is that of *Spectral Reuse* of cellular capacity whereby each cellular tower is divided into twenty-four, fifteen degree segments, each one of which can be used to transmit and receive discrete information. This effectively creates twenty-four "virtual" cell towers whereas before there was just one. This amazing new technology is just in it's infancy but promises widespread applicability. On Mar. 28, 2001 Kyocera and Sprint introduced the first combination cellphone & PDA. Sony followed suit in early May. Hewlett-Packard promises streaming video to hand-held devices in the near future. "Air Cards" have just been released whereby a plug-in to existing PCMCIA slots turns any laptop into a wireless device. Dozens and dozens of new hardware/software combinations are expected over the next twelve months all of which will use the MDS spectrum. The public wants and needs these new services. Licensees should be allowed the necessary time to provide them.

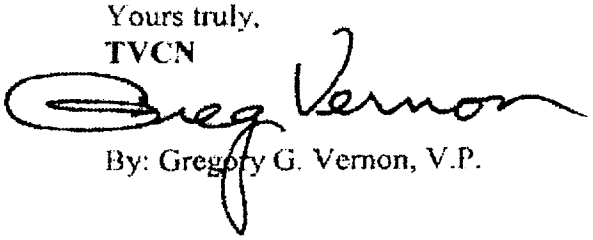
We are living through the third and fourth generation communications revolution and it will make life more efficient, enjoyable and effective for all of us. However, new technology is never finished. Both hardware and software applications constantly change especially at the front-end of the revolution. That fact is never more pronounced than it is in the MDS and ITFS world. This industry is just entering it's adolescence. Many more remarkable changes are already lining up on the horizon.

The simple fact of the matter is that a two-year time period is just not sufficient to even complete testing of these important new technologies let alone to complete the massive scale construction required throughout the country. The public interest, necessity and convenience would not be served with only a two-year extension. If a wooden, inflexible standard is adopted in the midst of ever-changing technology the public will be shortchanged and forced to accept outmoded technology simply because the licensee has to meet a deadline.

The Commission has routinely granted a ten (10) year build-out for new services that employ emerging technologies. Normally, the "ascertainable standard" test would be a good one. However, right now there is no ascertainable standard in the evolving technology of this industry. Huge, far-reaching technological changes are still taking

place. Massive re-definitions of MDS spectrum use parameters are still in progress. It makes no sense to rush-to-judgment in such a dynamic, fast-changing environment. We can all remember when, in 1992, we all felt that just four (4) channels of MMDS would be sufficient. Times have certainly changed and are still changing. We feel that it only makes good sense to extend the build-out for *at least* five years. In light of the ever-changing big picture within this industry, a ten (10) year extension might really be more appropriate. Alternatively, a ten (10) year extension from October of 1998 (through 2008) would be reasonable and fair.

Yours truly,
TVCN



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